PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Business Meeting
September 12, 2005
Department of Environmental Quality
Metcalf Building Room 111, 1520 East 6th Avenue
Helena, MT

Members in attendance were Tom Bateridge, Theresa Blazicevich, Greg Cross, Shaun Peterson, and Frank Schumacher. Also in attendance were Terry Wadsworth, Executive Director and Paul Johnson, Board attorney.

Presiding Officer Cross called the meeting to order at 9:59 a.m. He introduced Ms. Blazicevich, a new member of the Board.

Approval of Minutes

Mr. Schumacher moved to accept the minutes of the July 18, 2005 Board meeting as written. Mr. Peterson seconded. **The motion was unanimously approved.**

Eligibility – Mary Hightower Property – FacID #56-14109, Rel #4274, Silver Gate

Mr. Wadsworth gave a summary of the chronology of events at the site. The Board staff recommended denying eligibility to the release because the substandard tanks were not in compliance with the rules in place at the time the release was discovered requiring spill, overfill and corrosion protection, release prevention and detection devices, and testing, monitoring and recordkeeping.

Mr. Lee Brunner, attorney representing Mary Hightower, rose to make a presentation to the Board. He gave a short chronology of the activities at the site, noting that Mrs. Hightower's husband, now deceased, purchased the property in 1984, and that a Department investigation into the site resulted in removal of two inferred tanks and four additional tanks that were discovered, and discovery of a release. In the professional opinion of the tank remover, the tanks had been pumped out prior to 1984. Some of the tanks had rusted through, allowing ground water to enter the tanks.

Mr. Brunner noted that the eligibility application was submitted on March 30, 2005. He contended that as a result, the 2003 statute, effective October 1, 2003, applies to this release. He gave a summary of the eligibility requirements of the 2003 statute (§75-11-308, MCA (2003)), stating that Mrs. Hightower complied with the Department's rules concerning removal of a previously closed UST system (ARM 17.56.704). Mr. Bruner also contended that this release qualified for eligibility as discovered tanks under §75-11-308(a)(iii), MCA.

Mr. Franks, the contractor who removed the tanks, addressed the Board. He stated that a permit was issued to remove two tanks, and during the work four additional tanks were found. There was little surface evidence of the two larger tanks beyond a one-inch vent pipe along the side of the building. There was no surface evidence of the four small tanks. He believes the tanks were pumped out before 1984 because Mrs. Hightower doesn't recall hiring anyone to pump out tanks after 1984, and all the small tanks were dry. That made him conclude that all of them had been pumped out. During removal, he pumped water out of one of the larger tanks that was buried deeper. The ground water level in the Cook City area fluctuates between roughly 2 feet below ground surface (bgs) and 8'bgs. The water in the tank came from ground water coming up into the tanks through perforations in the tank.

Mr. Schumacher asked Mr. Johnson, the Board's attorney, to comment on the situation.

Mr. Johnson believes Mr. Bruner's analysis is in error when he contends that, because the eligibility application was filed in 2005, the 2003 statute applies. The Board has consistently been applying the rule that the statutes and rules in effect at the time the release was discovered, not the time of submission of the eligibility application, are the statutes and rules that must be adhered to for a grant of eligibility. This release was discovered on September 8, 2003, before the 2003 statute went into effect; therefore, the 2001 version of the statute applies. §75-11-308(1)(e), MCA (2001) required the owner to comply with the statutes and rules the Board had determined should apply to petroleum storage tanks, or the mitigation of petroleum releases. That requires the Board to look at ARM 17.58.326, the rule where the Board has lined out the specific administrative rules operators must follow to gain eligibility under §308(1)(e). ARM 17.58.326(1)(c) contains provisions that require owners and operators to comply with DEQ's spill, overfill and corrosion protection requirements,

and release prevention and detection requirements, found in ARM 17.56 Subchapter 3 and Subchapter 4 of the Department's regulations. This owner did not comply with those requirements and therefore, under the statute in effect at the time the release was discovered, the owner does not qualify for eligibility. It is a mandatory requirement under the 2001 law, not an optional one. The use of the statute in effect at the time the release was discovered was recently endorsed in a case where the Board applied the rules in effect at the time the release was discovered, it was challenged by the owner/operator (M&H Gas), went to a hearing. The District Court that decided the case endorsed the rule and applied the rules in effect at the time the release was discovered.

Mr. Bruner stated that M&H Gas does not interpret §308(1)(a)(i) (2003). He stated that the Board gets to decide what its statutes and rules mean. The Board doesn't have to listen to anybody else about what they mean. The statute says releases must have occurred on or after April 13, 1989, not October 1, 2003. Therefore, any release that occurred after April 13, 1989 is eligible if it meets certain conditions. He believes the statute is very clear.

Mr. Wadsworth pointed out to the Board that subparagraphs (i), (ii), and (iii) under §75-11-308(a) all contain the language "at the time that the release was discovered." The 2001 version of the law also contains language that requires compliance with rules in effect at the time the release was discovered.

Mr. Bruner stated that there are very specific legal requirements for statutory interpretation. The phrase "at the time the release was discovered" appears in subsection §308(a)(i), meaning subsection (i) applies at the time the release was discovered. The requirement that the release occurred after April 13,1989 appears in subsection §308(a), therefore it does have to comply with the administrative rules that were in place at the time the release was discovered, but the statute that applies is "any release after April 13, 1989". In addition, Mr. Bruner believes the release is eligible under the old statute, as well.

Mr. Johnson believes Mr. Bruner's argument is incorrect. The provision in §75-11-308(a) (2003) requiring that a release occurred after April 13, 1989 is simply one of a number of requirements that must be satisfied in order for a release to be eligible under the statute. It does not mean that from this point forward, as long as a release was discovered after the date mentioned, only the version of the statute that was passed in 2003 applies to the criteria for determining eligibility. With that kind of interpretation, an owner or operator who discovered a release before the 2003 statute came into effect, who complied with all of the rules and requirements in effect at the time the release was discovered, could be found out of compliance because under this interpretation the Board is restricted to only the version of §75-11-308(1)(a) that became effective October 1, 2003. Such an interpretation would lead to difficulties and bad results in the future. The whole focus of §75-11-308(1) for some time now has been on the date the release was discovered. That is the most reasonable, consistent and uniform way to apply these rules to owners and operators as releases are discovered.

Mr. Bruner asked the Board to use their common sense. Nowhere in the statute does 2003 appear, nowhere does it say "releases after 2003". The staff is asking the Board to insert new terms and requirements into the statute. All the statute says is releases after 1989. He then explained why he believes the release is eligible under the 2001 statute, as well. Under the old statute, the question is did the owner/operator comply with §75-11-308(e), which required operation and maintenance of the tank to comply with applicable state and federal laws and rules. A case occurred in Townsend, under the old statute that was the impetus for the provisions in the new statute. In that case it was determined that if an owner/operator had an unknown tank, as long as the owner/operator immediately addressed it, and did everything right, then compliance with §308(e) has been achieved. Therefore, even if the old statute is applied, the tanks in this case are eligible.

At the request of a Board member, Mr. Johnson explained that a new provision was inserted into the 2003 law to address tanks that were previously unknown to the owner/operator, sometimes referred to as "found" or "discovered" tanks. That new recognition of eligibility for found tanks wasn't the law of the land when this release was discovered in September of 2003. The law that applies is the version of §75-11-308 in the 2001 statute that was in effect at the time the release was discovered, which doesn't have any provision for found tanks. In addition, it is his understanding that the owner has admitted her awareness that there were tanks on the property at the time she purchased the property in 1985. Therefore the found tank argument would be weak in any event.

Mr. Bruner stated that with the precedent in the Townsend case, the Board said we interpret our statute to mean that if you find a tank and you immediately bring it into compliance with the applicable rules and regulations, it is eligible.

Mr. Cross asked if all parties are in agreement that these tanks qualify as found tanks.

Mr. Wadsworth stated that there are two groups of tanks at the facility. The owner/operator knew about one group, and another group was discovered while removing the known tanks.

Mr. Bruner stated that Mrs. Hightower's position is she didn't know about the tanks until she received a letter from DEQ. Once she was notified, she took action to investigate. Nobody knows whether the release came from the suspected tanks or the discovered tanks.

Mr. Wadsworth stated that on the two forms Mrs. Hightower completed, Form 7 (third-party liability) and Form 1-R (eligibility request), she indicated that she knew the tanks were last used in 1985, so she was aware the tank was last used in June 1985. In addition, the Department has photographs of the site that show fill and vent pipes next to the building, as well as pipes to the former dispenser island. The site looks like an old gas station where the dispensers were removed and everything else was left in place.

Mr. Bruner stated Mrs. Hightower told him she put that down because that was when she got the property, and she knew they had never used the tanks. The fact that the site was an old gas station is not in dispute.

Mr. Cross asked for a motion to accept the staff's recommendation to deny eligibility. No motion was made. He asked for a motion to find the site eligible. No motion was made.

Mr. Bruner suggested the Board submit to a hearings examiner the question of which statute applies to this case.

Mr. Johnson noted that a very similar question is currently in the hearing process with the Town Pump Dillon case. That case is set for hearing on November 16 and the issue of what law applies at what time will be before the hearing examiner. The current matter could be tabled until the hearing examiner rules in the Town Pump Dillon case. He anticipates a ruling from the hearing examiner on summary judgment motions by mid-November.

Mr. Bruner indicated he would be amendable to that course of action but would like to be able to file an *amicus* brief on the issue.

Presiding Officer Cross laid the matter on the table, awaiting a ruling on the summary judgment motions that will be filed.

Eligibility – Korner One Stop – Fac ID #53-11603, Rel. #3870, Nashua

Mr. Wadsworth noted some corrections to the Executive Summary provided to the Board. He then gave a summary of the Board staff's recommendation to find the site ineligible. A suspected release was identified when the tanks were removed on November 8, 1999. The release was confirmed by analytical results on November 30, 1999, but not called in until December 7, 1999, thus violating the 24-hour rule.

Mr. Hrubes, Eastern Montana Environmental, addressed the Board. He indicated that at the time this release was discovered, DEQ was in transition between using one set of chemical data to determine releases and a different set of chemical data. This lead to difficulties in receiving reports of the appropriate analytical results because some of the laboratories did not have the proper equipment to conduct the new tests and needed to subcontract the work. His field data were not accurate enough to confirm a release at the time the tanks were removed and he had to wait until analytical results were received from the lab. He did not receive hard copy confirmation of the release until December 7, 1999.

Mr. Peterson moved to grant eligibility to the release. He based his motion on the fact that the staff's recommendation appeared to be based on the 24-hour rule violation, and that rule was not intended to be a stick. The delay did not cause any increase in the severity of the release. Presiding Officer Cross asked for a second on the motion. There was none.

Mr. Wadsworth noted that the PTRCB file contains a letter, dated November 30, 1999, from the lab to Mr. Hrubes.

Mr. Hrubes stated that he received that letter on December 7, 1999.

Mr. Bateridge asked for clarification of the 24-hour rule.

Mr. Johnson provided a brief analysis of the rule, noting that §75-11-308, MCA, the eligibility statute, and §75-11-309, MCA, the reimbursement statute, require compliance with the Department's rules about notification when a release or suspected release is discovered. The law, before the 2003 legislative changes, was clear black letter law that required owners and operators to adhere to the 24-hour time period to notify the department about releases. In §309, the reimbursement section, there is a provision that owners/operators immediately notify the department when they discover evidence that a release may have occurred. There has been a continuing legislative spotlight on immediate, or at least very prompt, notification to the Department about releases and suspected releases. In 2003, that provision of §75-11-308 (prompt notification provision) was amended and was the requirement that was dropped from the eligibility statute. The immediate notification requirement, however, continued to operate in the reimbursement statute. However, §308

continued to refer to, and to require owners and operators to comply with, the statutes and rules the Board determines should apply to USTs. ARM 17.58.326 is the Board's rule that sets forth all the rules the Board thinks should apply to USTs. One of those rules is the Department's rule requiring notice within 24 hours. The Department's rule about 24-hour notice has changed over time, as well. There was a past rule that required owners/operators to report releases within 24 hours, along with a set of criteria for what kind of conditions triggered the requirement. Now there are a couple of Department rules that apply to suspected releases and confirmed releases, and both of those have notice requirements requiring prompt notification to the Department. Currently, the Board eligibility statute, by reference to the rules the Board has adopted, still contains a prompt notice requirement and the reimbursement statute still contains an immediate notification requirement.

Presiding Officer Cross asked Ronna Alexander to comment.

Ms. Alexander stated that HB 368 (2003 Legislature) changed several parts of the statute. The 24-hour release report requirement was taken out of statute because the Board did not want to have to use it as a hammer in every circumstance, as is required when it appears in statute. She believes the key is that you don't have to apply the rule in every situation. The statute clearly says that the Board gets to determine which of those rules pertain to the prevention and mitigation of the release *in each circumstance* (original emphasis). She believes the Board can decide that and interpret your own rules. If the Board decides in this particular case that failing to report within 24 hours does not exacerbate the problem, then the Board does not have to apply that rule. That is very clear. The reason the requirement was not taken out of rule entirely is that occasionally there might be a big release that is an immediate problem and the thing reported must be reported quickly. Failure to do so could make the problem worse. But it was taken out of statute, and in this case the failure to report within 24 hours clearly did not make the problem worse. There are other eligibilities that will come before the Board in November that are based on this exact same problem. Ms. Alexander stated that she will pull the legislative record and testimony from all the legislative committees so the Board can clearly understand what the legislative intent was. The issue is not black and white.

Mr. Johnson stated that Ms. Alexander's analysis plays a little fast and loose with the legal rules of statutory construction. She argues that since the legislature changed the eligibility statute §308) in 2003 by removing that section, that the Board has discretion to either apply or not apply the 24-hour rule; however, that is not the way law is interpreted. The primary rule of statutory construction is that if the black letter of the law is unambiguous and can be construed by simply reading the text of the rule, there is no need for any further interpretation. Tools of statutory construction are only resorted to when there is some ambiguity in the black letter law that requires resolving the ambiguity. In this case there is no ambiguity with the rule. The Marketers Association did not accomplish all it wanted to accomplish when the statute was changed, because there is still a black letter law rule. To ignore that rule, or apply it in some cases and not in others is to tread on very dangerous ground.

Mr. Johnson pointed out to the Board that the release in the current case was discovered in 1999, so the 2003 law does not apply. In addition, this case is very similar to the M&H Gas case. M&H Gas argued that no additional harm occurred because of failure to report. The Hearing Examiner endorsed that argument. The District Court recognized that the Examiner had endorsed the argument, but specifically rejected it as a reason for not applying the 24-hour rule in that case.

Presiding Officer Cross asked for a second on the motion. There was none. The motion died.

Mr. Schumacher asked Mr. Wadsworth if receipt of the November 30 letter containing analytical results constitutes confirmation of the release. Mr. Wadsworth agreed. If Mr. Hrubes could confirm that he called in the release on the same day he received the letter, there would be no 24-hour rule violation.

Mr. Hrubes stated that he received the November 30, 1999 letter from the laboratory on December 7, 1999. It was called in that same day.

Mr. Peterson moved that the Board accept this release for eligibility based on the stipulation that Mr. Hrubes received the confirmation letter on December 7, 1999, and called it in that same day. Mr. Schumacher seconded. **The motion was unanimously approved.**

Claim Adjustment, Claim #20050331-F, Town Pump, Fac ID #16-08721, Rel. #4160, Three Forks

This matter concerns a dispute to staff adjustments to claim #20050331-F. The Department and RAM Environmental had agreed to 18 hours for report preparation. The claim received included 5.75 hours over and above the agreed-upon time. The staff adjusted the claim to the agreed-upon hours.

Mr. Dennis Franks addressed the Board. He stated that RAM did not agree to the 18 hours, and that the level of effort to write the report was greater than anticipated. He introduced Mr. Kevin Loustaunau, who provided photographs of the site. Mr. Franks and Mr. Loustaunau provided a brief account of the activities at the site, noting that the owner/operator rearranged and reconstructed the entire facility after the initial work was done. It was expressed that a great deal of extra effort was needed to confirm the location of old data points and correlate them to newer data points gathered once the rearrangement and reconstruction was complete.

There was a discussion between Mr. Franks, the Board and Mr. Wadsworth concerning the method for negotiating and determining hours and dollars required to complete a project. Mr. Franks expressed frustration with what he feels is the Department's inflexibility with regard to negotiations on work plan hours and costs. Mr. Wadsworth discussed the Board staff's process for adjusting costs and hours due to unexpected circumstances, through use of the Form 8 (Corrective action Plan Modification). The Form 8 requires the contractor to provide justification for adjustments to the approved work plan. The staff conducts statistical analysis of similar tasks to determine whether the total costs for a task are excessive. In the case of this claim, these analyses indicated to the staff that the extra costs were not necessary.

Mr. Schumacher moved that the Board accept the Board's prior decision to make the adjustment. Mr. Bateridge seconded. **The motion was unanimously approved.**

Orientation

Presiding Officer Cross announced the Board would focus on training and resume the remaining agenda topics at 1L00 p.m. The Board then moved to a new member training session during the noon hour. The training session remained open to the public, though no other agenda items were discussed during the orientation.

At 1:07 p.m., Presiding Officer Cross asked that the next agenda item be brought to the floor.

Eligibility Ratification

Mr. Wadsworth informed the Board of the eligibility applications before the Board. (See table below). At the request of the owners, consideration of three releases was postponed until the November Board meeting, as follows: Fic's Kwik Six, St. Mary Lodge & Resort, and Judith Gap Oil.

Mr. Schumacher moved to ratify the eligibility determinations contained in the eligibility table, with the corrections noted. Mr. Peterson seconded. **The motion was unanimously approved.**

Board Staff Recommendations Pertaining to Eligibility
From July 6, 2005 thru August 29, 2005

Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Helena	Danny's Drive In Cleaners	60-15001	4410 May 2005	Eligible – No reported violations 7/5/05
Brady	Bartsch Farms	37-02473	4032 June 2001	Eligible- No reported violations – 7/26/05
Glendive	Joy's Glendive Service	11-07770	4353 Jul 2004	Eligible – No reported violations – 7/28/05
Coram	Glacier Center	15-10895	4398 Mar 2005	Eligible – No reported violations- 8/1/05
Glasgow	Former Econo Lumber	99-95002	4395 Mar 2005	Eligible –No reported violations – 8/8/05
Drummond	Fic's Kwik Six	20-03192	4378 Sept 2004	Ineligible- Failure to report a confirmed release 8/9/05 – **APPEALED – January 9, 2006**

Table continued . . .

Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
St Mary	St. Mary Lodge & Resort	18-01907	4409 Apr 2005	Ineligible – Violations of 17.56.502(1)(J) & 17.56.506(1)(b) – 8/18/05 – **APPEALED – January 9, 2006**
Glasgow	Former Terry's Chevrolet	00194	4014 Apr 2001	Eligible – No reported violations 8/18/05
Billings	Former Exxon Station	56-14163	4399 Feb 2005	Eligible – No noted violations – 8/19/05
Judith Gap	Judith Gap Oil	99-95005	4405 Nov 2004	Ineligible- Violations of 17.56.502(1)(j) & 506(1)(b) 8/25/05 – **APPEALED – January 9, 2006**
Great Falls	Kernaghan's Pik & Pump	07-04508	4005 Mar 2001	Eligible – No violations noted – 8/29/05

Claims over $25,000

Mr. Wadsworth presented the Board with the claim for amounts greater than $25,000 since the last Board meeting. (See table below). There was one claim totaling $34,202.58. Mr. Bateridge moved to approve the claim over $25,000. Mr. Schumacher seconded. **The motion was unanimously approved.**

Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Reimbursed
Bonner	Stimson Lumber	32-04262	20050606F	$34,202.58	$34,202.58
Total					**$**34,202.58

Weekly Reimbursements

Mr. Wadsworth presented the Board with the summary of weekly claim reimbursements for the week of July 13, 2005 through the week of August 24, 2005 for Board ratification. (See table below). There were 194 claims, totaling $554,153.71.

Mr. Schumacher noted that approximately $56,000 has been spent on well installation on sites that are from 1991 through 1999 and asked why there are so many wells being installed on those sites.

Jeff Kuhn, Petroleum Release Section Manager, responded to that question. Many sites are in long term monitoring because they do not meet water quality standards. In order to close those sites, the Department must document the ongoing trend to get them below ground water standards for specific constituents. In some cases additional wells are drilled to provide additional site assessment work or to fill data gaps for closure assessment.

Mr. Schumacher moved to approve the weekly claim reimbursements. Mr. Bateridge seconded. **The motion was unanimously approved.**

WEEKLY CLAIM REIMBURSEMENTS
September 12, 2005 BOARD MEETING

Week of	Number of Claims	Funds Reimbursed
July 13, 2005	37	$91,503.69
July 20, 2005	20	$53,755.65
July 27, 2005	23	$48,939.57
August 3, 2005	30	$76,997.66
August 17, 2005	62	$185,366.03
August 24, 2005	22	$97,591.11
Total	**194**	**$554,153.71**

City of Havre and MDT Utility and Highway Improvement Project

Mr. Wadsworth presented a summary of the City of Havre Utility and Highway Improvement Project. The project will begin in the spring of 2006. He explained that sites along the project corridor would be liable for a portion of soil and ground water remediation costs associated with contamination encountered during the project. The staff is in negotiations with the Montana Department of Transportation and the City of Havre concerning how the Fund will reimburse costs for excavation, transport and disposal of contaminated soils for those releases that are Fund eligible.

In addition, it is anticipated that much of the work done on the project will be below the water table resulting in the need to remediate contaminated groundwater. Determining cost sharing on this aspect of the project will be more difficult, since the proposed ground water stripping tower and polishing process will need to be available and operating over the entire length of the project, requiring equipment maintenance and discharge sampling. Discussions are under way to develop a system for allocating the costs between eligible releases, ineligible releases, and those releases that may be discovered during the project. The current proposal is to allocate those costs to the individuals along the corridor on the basis of the linear distance each individual owns as a percentage of the overall linear distance. The allocation will not be made until the end of the entire project, and all costs are known.

Presiding Officer Cross requested that the Department monitor the excavation portion of the project so that as much contaminated soil as possible is excavated and disposed.

The Board staff has notified owners and operators of eligible releases in the City of Havre of the project and the ongoing negotiations. Mr. Wadsworth indicated that certain costs will not be attributed to the Fund eligibility sites, including pumping, reduction of water turbidity, mineral content, and non-petroleum contaminants, since those dewatering costs will be required regardless of the presence of petroleum contamination. He will have a better idea of the anticipated costs when the bids are in for the project.

Third-party Review of Corrective Action Plans and Claims Program

Mr. Wadsworth presented the Board with a draft Third-Party Review Program. §75-11-312, MCA allows the Board to institute a program of third-party review for corrective action plans and claims, as a means to ensure that the Fund is being used in the most efficient manner. The proposed program addresses three matters: level of effort; level of professional (e.g., staff or senior engineer, etc.); and cost evaluation with respect to the requirement that costs be actual, reasonable and necessary. This program will provide the Board, the owners and operators, and the consultants the opportunity to request review of a proposed program.

The Board indicated that they would like the staff to distribute the draft program to the consulting community for comment.

Mr. Wadsworth suggested that if the Board is interested in pursuing the program, there is currently a work plan before the staff that could be used as a test case.

Mr. Johnson stated that the Board has the authority to move forward with a test case, though at some future date the steps and process should probably be done through rulemaking.

Presiding Officer Cross, with the concurrence of the Board, directed the staff to move forward with the test case.

Pay by Task

This matter was postponed to the November, 2005 Board meeting.

Status of Sinclair Oil Company – Fac ID #07-02088, Rel #3442, Great Falls

Aaron Anderson, Petroleum Release Section, provided a summary of work done at the Sinclair Oil Company site in Great Falls and an update on the status of the site. In closing, he indicated that the release has been submitted to the closure committee and is moving through that process.

Proposed 2006 Board Meeting Dates

Mr. Peterson moved to accept the proposed meeting dates for calendar year 2006. Mr. Bateridge seconded. **The motion was unanimously approved.** The meeting dates are as follows: January 9, 2006; March 6, 2006; May 1, 2006; June 26, 2006; August 21, 2006; October 16, 2006; December 11, 2006.

Corrective Action Plan Modification (Form 8)

Mr. Wadsworth pointed out the comments that were received from the consultants on the draft Corrective Action Plan Modification Form 8, and modifications made to the form. The Board directed Mr. Wadsworth to accept the draft as the final version of the Form.

Rule Working Group Report

Mr. Wadsworth provided a brief summary of the status of the Working Group activities to date. An AST draft checklist has been developed and amended. There have been discussions concerning implementation of the AST checklist. The issue of possible regulation of heating oil tanks remains to be addressed.

Bill Rule, DEQ and a member of the Group, stated that he hopes the work group will resolve how out of service AST facilities will be addressed. He asked whether using compliance as a determinant of eligibility is the direction the Board wants to go. This method seems to protect the Fund, but perhaps is not the best way to protect the environment.

Presiding Officer Cross acknowledged that the issue of AST compliance is a difficult one that must be addressed, and that clean-up of environmental damage is the purpose of the Fund.

Fiscal Report

Mr. Wadsworth presented the Board with the current Fiscal Report. He noted that there are two reports this time – the Year End report for Fiscal Year 05 and the July 31, 2005 report.

Mr. Schumacher commended Mr. Wadsworth and Ms. Olsen for the accuracy of their projections for year-end figures. He asked if Mr. Wadsworth had evaluated whether paying off the 1997 loan early was of any benefit. Mr. Wadsworth indicated that there is probably not any benefit to be gained.

Board Attorney Report

Paul Johnson, attorney for the Board, provided an update on the Town Pump-Dillon case (see table). Discovery closed on September 2, 2005. Both parties anticipate filing motions for summary judgment. If both summary judgment motions fail, a hearing will be held in mid-November.

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Boulder	Old Texaco Station	22-11481 Release #03138	Eligibility 11/25/97	Dismissal Pending because cleanup of release completed.
Thompson Falls	Feed and Fuel	45-02633 Release # 03545	Eligibility	Case was stayed on 10/21/99.
Eureka	Town & Country	27-07148 Release #03642	Eligibility 8/12/99	Hearing postponed as of 11/9/99.
Helena	Allen's Oil Bulk Plant	25-01025 Release #02893	Eligibility 11/29/99	Case was stayed on 1/21/00.
Butte	Shamrock Motors	47-08592 Release #03650	Eligibility 10/1/99	Case on hold pending notification to Hearing Officer.
Whitefish	Rocky Mountain Transportation	15-01371 Release #03809	Eligibility 9/11/01	Ongoing discovery. No hearing date set.

Table continued . . .

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Lakeside	Lakeside Exxon	15-13487 Release #03955	Eligibility 11/6/01	In discovery stage.
Helena	Noon's #438	25-03918 Release # 03980	Eligibility 2/19/02	Case stayed.
Wolf Point	Isle Oil Co	43-08893 Release #2552	3 claim adjustments 12/21/02	Hearing stayed. Settlement negotiations on-going.
Belt	Mary Catherine Castner	07-12039	Eligibility 11/22/02	Mar 12, 2003 stayed for up to one year.
Dillon	Town Pump Dillon #1	01-08695 Release #4144	Eligibility 03/07/05	Hearing set for Nov 16, 2005. Discovery continues.

Board Staff Report

Mr. Wadsworth presented the Board staff report showing that 67 eligibility applications were received during the past twelve months. 50 were eligible, 4 were ineligible, and 13 are pending. The number of claims received in the past twelve months is 1529 and the number reimbursed is 1520. Mr. Wadsworth also noted that the Board had received a letter from the Legislative Audit Division requesting a progress report on the recommendations contained in the November 2003 Legislative Audit report. He stated that the Board staff will respond to the request in the next week or two, and provide a report of that response at the November Board meeting.

Petroleum Release Section Report

Sandi Olsen, Remediation Division Administrator, presented the PRS Report. She noted that there have been 4243 releases identified since the inception of the program through August 31, 2005, and 2620 of them have been resolved. 1623 releases remain active. There have been 47 new releases since January 1, 2005 and 16 have been closed.

Public Forum

Mr. Wadsworth stated that Mr. Noble has expressed concern about the solvency of the Fund and suggests appointing an ad hoc committee to evaluate fund solvency and address owner/operator involvement, consultant involvement, cleanup and closure requirements, and rules and statutes that apply to the Petro Board as they relate to Fund solvency. He suggests that the committee be comprised of six people, including two Board members, two DEQ personnel and two consultants.

Mr. Schumacher suggested that the committee should include technical representation for the Board.

Ms. Olsen suggested that two owner/operators also participate in the committee.

Presiding Officer Cross instructed Mr. Wadsworth to begin the process of assembling the members of the committee.

Earl Griffith, Tetra Tech, addressed the Board concerning a release on which he has requested, and was denied, closure. He described the history of the release and remediation efforts, noting that he requested closure after finding only one well with only one constituent that was twelve parts per billion above the risk based screening levels (RBSL). He expressed great frustration at the closure process. The case manager recommended closure; however, the rest of the closure committee members indicated they would like another round of sampling. When the DEQ letter arrived, it not only included additional sampling, but also required drilling three additional wells, sampling all wells twice, including two surface water samples and additional work. The cost would be in the neighborhood of $25,000, and seemed excessive. He feels very strongly that the amount of work requested is unreasonable. He has arranged a meeting with Ms. Olsen to discuss the matter.

Presiding Officer Cross asked Mr. Griffith to update the Board on the situation after his meeting with Ms. Olsen.

Mr. Kuhn responded that Mr. Griffith was invited three times to meet with DEQ and discussions are a normal part of the closure process. The closure process is published on the website.

Ronna Alexander addressed the Board and reiterated her assertion that the Board has the discretion to interpret it's rules any way they wish, and that House Bill 368 intended to remove the 24-hour rule as a bar to eligibility. A discussion occurred between Ms. Alexander, Mr. Johnson and members of the Board and audience.

Ms. Olsen stated that spring of 2006 is the beginning of the next legislative cycle, and if there are statutory changes that should be addressed, this is the time to identify those and begin preparing alternative language to allow the Board to waive certain criteria under certain conditions.

Ms. Alexander also stated that she had contacted Legislator Barrett and asked for an opinion from Greg Pettish, Director of Legal Services and the head of legislative counsel, concerning the issue of the applicability of the five-year rule and the confusion between the savings clause and the applicability clause. She asked that the Board accept that review into the record and move forward and conduct business in the manner the legislature intended.

Mr. Johnson gave a summary of the opinion letter, indicating that in cases of ambiguity, Mr. Pettish supported applying the applicability clause. This results in the Board functioning under a five-year rule.

Mr. Schumacher moved that the Board adopt the conclusion of Mr. Pettish's analysis. Mr. Peterson seconded. **The motion was unanimously approved.**

The next scheduled Board meeting is November 7, 2005.

Meeting adjourned at 3:40 p.m.

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Presiding Officer